

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-CV-329-GKF-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**CARGILL, INC.'S AMENDED RESPONSE TO STATE OF
OKLAHOMA'S APRIL 20, 2007 SET OF REQUESTS TO ADMIT
AND REQUEST FOR PRODUCTION TO CARGILL, INC.**

Pursuant to Fed. R. Civ. P. 26, 34 and 36, Defendant Cargill, Inc. ("Cargill") hereby provides the following amended responses to Plaintiffs' April 20, 2007 Set of Requests to Admit and Requests for Production to Cargill, Inc.

Objection Not Specific to Any Individual Request

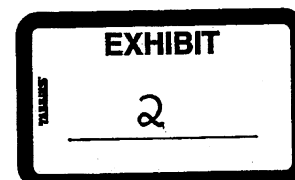
Cargill objects to Plaintiffs' purported definition of "Waters of the State" on the ground that it is overly broad and misleading, encompassing water that is far beyond the scope of any claim that Plaintiffs make in this lawsuit.

Responses to Requests to Admit

To the extent Plaintiffs may interpret any response below to address less than all of the subject matter of a particular request, it is Cargill's intention to deny any portion of any request not specifically admitted or otherwise specifically addressed in Cargill's response.

Request to Admit No. 1: Admit that poultry waste from one or more of your poultry growing operations has been spread on land located within the Illinois River Watershed.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing



operations under contract with” Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill’s poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs’ request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to Plaintiffs’ request on the ground that its definition of “poultry waste” is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs’ use of the term “poultry waste” as argumentative, inasmuch as poultry material used as fertilizer is not “waste” but is in fact a useful and beneficial material.

Cargill further objects to this request on the ground that it is unlimited in time and in effect asks whether a certain event ever occurred at any time in history. The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Inasmuch as Plaintiffs’ attorneys have declined either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) (“when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder”). Therefore, without waiving these objections, and without being bound by Plaintiffs’ definitions, Cargill responds as follows:

With respect to Cargill’s own poultry-growing operations, Cargill states that

at various times it applied poultry material as fertilizer on its operation sites in compliance with the applicable Nutrient Management Plan. On information and belief, poultry material, when land-applied as a fertilizer, contains naturally occurring substances such as copper, zinc, and arsenic that are essential for life and ubiquitous in nature. Further, on information and belief, litter-amended soils contain substances such as copper, zinc, and arsenic in concentrations similar to background levels found in soils in the Illinois River Watershed. Cargill further states that it hired a contractor to remove additional poultry material from its facilities. That contractor was permitted to keep the poultry material as partial payment for that work, and, on information and belief, may have applied or sold such poultry material as fertilizer within the IRW. Beyond this, Cargill denies this request.

With respect to poultry farmers with whom Cargill contracted, Cargill states that it understands on information and belief that, although practices differ among farms, some of these farmers may apply or may have applied poultry material as fertilizer on land within the Illinois River Watershed under permits issued by and in amounts regulated by various state agencies of Arkansas and Oklahoma. On information and belief, poultry material, when land-applied as a fertilizer, contains naturally occurring substances such as copper, zinc, and arsenic that are essential for life and ubiquitous in nature. Further, on information and belief, litter-amended soils contain substances such as copper, zinc, and arsenic in concentrations similar to background levels found in soils in the Illinois River Watershed. Other than that information and belief, Cargill denies this request.

Request to Admit No. 2: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the

Illinois River Watershed contains one or more “hazardous substances” within the meaning of CERCLA.

RESPONSE: Cargill objects to this request based on Plaintiffs’ erroneous definition of the term “your poultry growing operations” to include “poultry growing operations under contract with” Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill’s poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs’ request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to Plaintiffs’ request on the ground that its definition of “poultry waste” is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs’ use of the term “poultry waste” as argumentative, inasmuch as poultry material used as fertilizer is not “waste” but is in fact a useful and beneficial material.

Cargill further objects to this request on the ground that it is unlimited in time and in effect asks whether a certain event ever occurred at any time in history. The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Cargill also objects to Plaintiffs’ use of the phrase ““hazardous substances’ within the meaning of CERCLA” as vague, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, inasmuch as CERCLA regards as “hazardous substances” thousands of substances that are not at issue in this case. See, e.g., 40 C.F.R. § 302.4. In addition, CERCLA’s use of the term “hazardous substances” recognizes and accounts both for the presence of certain

substances in background levels and for the ordinary application of fertilizer, and Cargill understands that Plaintiffs' references to CERCLA are intended to incorporate that recognition.

Inasmuch as Plaintiffs' attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) ("when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder"). Therefore, without waiving these objections, and without being bound by Plaintiffs' definitions, Cargill responds as follows:

With respect to Cargill's own poultry-growing operations:

- With respect to phosphorus, nitrogen, zinc, arsenic, and copper, Cargill denies this request.
- With respect to the thousands of other "hazardous substances" listed under CERCLA, Cargill objects to the requests as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

With respect to poultry farmers with whom Cargill contracted:

- With respect to phosphorus, nitrogen, zinc, arsenic, and copper, Cargill denies this request.
- With respect to the thousands of other "hazardous substances" listed under CERCLA, Cargill objects to the requests as overly broad, unduly burdensome, and not reasonably

calculated to lead to the discovery of admissible evidence.

Request to Admit No. 3: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains pathogens.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing operations under contract with" Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill's poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs' request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to Plaintiffs' definition of "pathogens" as vague, overly broad, misleading, and internally contradictory. Although Plaintiffs' definition states that it is only intended to include "microorganisms (e.g., bacteria, viruses, or parasites) that can cause disease in humans, animals and plants," it gives as examples broad classes of microorganisms, including total coliforms and fecal coliforms, many species of which are harmless and have no capacity to cause disease in humans, animals, or plants. This internal contradiction prevents meaningful response to the request.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material.

Inasmuch as Plaintiffs' attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) ("when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder"). Therefore, without waiving these objections, and without being bound by Plaintiffs' definitions, Cargill responds as follows:

With respect to Cargill's own poultry-growing operations, Cargill denies this request.

With respect to poultry farmers with whom Cargill contracted, Cargill denies this request.

Request to Admit No. 4: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains phosphorus.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing operations under contract with" Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill's poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs' request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to this request on the ground that Plaintiffs' definition of

“phosphorus” as including phosphorus, phosphates, and phosphorus compounds renders the request compound, argumentative, and misleading. Phosphorus, phosphates, and phosphorus compounds are entirely different materials with different physical chemical characteristics that have different environmental and toxicological effects and are subject to different laws and legal standards. Plaintiffs’ effort to artificially combine all three substances into a single definition for their request for admission is therefore inherently misleading in any context in which the responses to the request for admissions would be used.

Cargill further objects to Plaintiffs’ request on the ground that its definition of “poultry waste” is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs’ use of the term “poultry waste” as argumentative, inasmuch as poultry material used as fertilizer is not “waste” but is in fact a useful and beneficial material.

Cargill further objects to this request on the ground that it is unlimited in time and in effect asks whether a certain event ever occurred at any time in history. The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Inasmuch as Plaintiffs’ attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) (“when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder”). Therefore, without waiving these objections, and without being bound by Plaintiffs’ definitions, Cargill responds as

follows:

With respect to Cargill's own poultry-growing operations:

- As to phosphates, Cargill states that it hired a contractor to remove poultry materials from its facilities. That contractor was permitted to keep the poultry materials as partial payment for that work, and, on information and belief, may have applied or sold such poultry materials as fertilizer within the IRW. On information and belief, that poultry materials may have contained organic and inorganic phosphates. Beyond this, Cargill denies this request.
- As to elemental phosphorus and other phosphorus compounds, Cargill denies this request.

With respect to poultry farmers with whom Cargill contracted:

- As to phosphates: Cargill understands on information and belief that, although practices differ among farms, some of these farmers may apply or may have applied poultry material as fertilizer on land within the Illinois River Watershed under permits issued by and in compliance with the regulations of various state agencies of Arkansas and Oklahoma. On information and belief, such poultry materials, when land applied as a fertilizer, contain naturally occurring substances such as inorganic and organic phosphates that are essential for life and ubiquitous in nature. Further, on information and belief, litter-amended soils contain organic and inorganic phosphates in concentrations similar to background levels found in soils in the Illinois River Watershed.
- As to elemental phosphorus and other phosphorus compounds,

Cargill denies the request.

Request to Admit No. 5: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing operations under contract with" Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill's poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs' request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to this request on the ground that Plaintiffs' definition of "run-off" is vague, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, particularly in its use of the phrase "directly or indirectly." Cargill also objects to this request on the ground that Plaintiffs' definition of the term "run-off" uses the word "release," which is a term of art in CERCLA and other environmental litigation and has a meaning inconsistent with Plaintiffs' use here. This inconsistency renders requests using the term "run-off" vague, ambiguous, misleading, and internally contradictory. Cargill also objects to this request on the ground that Plaintiffs define the phrase "run-off" only as a noun, but the request for admission uses the phrase only as a verb, rendering the request vague, unintelligible, and potentially misleading.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to

the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material.

Cargill further objects to this request on the ground that it is unlimited in time and in effect asks whether a certain event ever occurred at any time in history. The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Cargill further objects to this request on the ground that it seeks expert opinions and exceeds the scope of expert discovery permitted by this Court's scheduling Orders and by Fed. R. Civ. P. 26(b)(4).

Inasmuch as Plaintiffs' attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) ("when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder"). Therefore, without waiving these objections, and without being bound by Plaintiffs' definitions, Cargill responds as follows:

With respect to Cargill's own poultry-growing operations, Cargill denies this request.

With respect to poultry farmers with whom Cargill contracted, Cargill denies this request.

Request to Admit No. 6: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the

Oklahoma portion of the Illinois River Watershed has run-off from the land upon which it has been applied.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing operations under contract with" Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill's poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs' request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material.

Cargill further objects to this request on the ground that it is unlimited in time and in effect asks whether a certain event ever occurred at any time in history. The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Cargill further objects to this request on the ground that Plaintiffs' definition of "run-off" is vague, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, particularly in its use of the phrase "directly or indirectly." Cargill also objects to this request on the ground that Plaintiffs' definition of the term "run-off" uses the word "release," which is a term of art in CERCLA and other environmental litigation and has a meaning inconsistent with

Plaintiffs' use here. This inconsistency renders requests using the term "run-off" vague, ambiguous, misleading, and internally contradictory. Cargill also objects to this request on the ground that Plaintiffs define the phrase "run-off" only as a noun, but the request for admission uses the phrase only as a verb, rendering the request vague, unintelligible, and potentially misleading.

Cargill further objects to this request on the ground that it mistakenly assumes that "poultry waste from one or more of [Cargill's] poultry growing operations that has been spread on land located within the Oklahoma portion of the Illinois River Watershed."

Inasmuch as Plaintiffs' attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) ("when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder"). Therefore, without waiving these objections, and without being bound by Plaintiffs' definitions, Cargill responds as follows:

With respect to Cargill's own poultry-growing operations, Cargill denies this request.

With respect to poultry farmers with whom Cargill contracted, Cargill denies this request.

Request to Admit No. 7: Admit that one or more "hazardous substances" within the meaning of CERCLA contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the

Illinois River Watershed has run-off from the land upon which it has been applied.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing operations under contract with" Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill's poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs' request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material.

Cargill further objects to this request on the ground that it is unlimited in time and in effect asks whether a certain event ever occurred at any time in history. The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Cargill further objects to this request on the ground that Plaintiffs' definition of "run-off" is vague, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, particularly in its use of the phrase "directly or indirectly." Cargill also objects to this request on the ground that Plaintiffs' definition of the term "run-off" uses the word "release," which is a term of art in CERCLA and other environmental litigation and has a meaning inconsistent with Plaintiffs' use here. This inconsistency renders requests using the term "run-off"

vague, ambiguous, misleading, and internally contradictory. Cargill also objects to this request on the ground that Plaintiffs define the phrase “run-off” only as a noun, but the request for admission uses the phrase only as a verb, rendering the request vague, unintelligible, and potentially misleading.

In addition, CERCLA’s use of the term “hazardous substances” recognizes and accounts for the presence of certain substances, including copper, arsenic, and zinc, in background levels, and Cargill understands that Plaintiffs’ references to CERCLA are intended to incorporate that recognition.

Inasmuch as Plaintiffs’ attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) (“when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder”). Therefore, without waiving these objections, and without being bound by Plaintiffs’ definitions, Cargill responds as follows:

With respect to Cargill’s own poultry-growing operations, Cargill denies this request.

With respect to poultry farmers with whom Cargill contracted, Cargill denies this request.

Request to Admit No. 8: Admit that pathogens contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing operations under contract with" Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill's poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs' request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to Plaintiffs' definition of "pathogens" as vague, overly broad, misleading, and internally contradictory. Although Plaintiffs' definition states that it is only intended to include "microorganisms (e.g., bacteria, viruses, or parasites) that can cause disease in humans, animals and plants," it gives as examples broad classes of microorganisms, including total coliforms and fecal coliforms, many species of which are harmless and have no capacity to cause disease in humans, animals, or plants. This internal contradiction prevents meaningful response to the request.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material.

Cargill further objects to this request on the ground that it is unlimited in time and in effect asks whether a certain event ever occurred at any time in history. The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this request

on the ground that it is compound.

Cargill further objects to this request on the ground that Plaintiffs' definition of "run-off" is vague, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, particularly in its use of the phrase "directly or indirectly." Cargill also objects to this request on the ground that Plaintiffs' definition of the term "run-off" uses the word "release," which is a term of art in CERCLA and other environmental litigation and has a meaning inconsistent with Plaintiffs' use here. This inconsistency renders requests using the term "run-off" vague, ambiguous, misleading, and internally contradictory. Cargill also objects to this request on the ground that Plaintiffs define the phrase "run-off" only as a noun, but the request for admission uses the phrase only as a verb, rendering the request vague, unintelligible, and potentially misleading.

Inasmuch as Plaintiffs' attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) ("when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder"). Therefore, without waiving these objections, and without being bound by Plaintiffs' definitions, Cargill responds as follows:

With respect to Cargill's own poultry-growing operations, Cargill denies this request.

With respect to poultry farmers with whom Cargill contracted, Cargill denies this request.

Request to Admit No. 9: Admit that phosphorus contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing operations under contract with" Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill's poultry growing operations, as Plaintiffs are well aware. The incorporation of this erroneous definition in Plaintiffs' request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill objects to this request on the ground that Plaintiffs' definition of "phosphorus" as including phosphorus, phosphates, and phosphorus compounds renders the request compound, argumentative, and misleading. Phosphorus, phosphates, and phosphorus compounds are entirely different materials with different physical chemical characteristics that have different environmental and toxicological effects and are subject to different laws and legal standards. Plaintiffs' effort to artificially combine all three substances into a single definition for their request for admission is therefore inherently misleading in any context in which the responses to the request for admissions would be used.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer

is not “waste” but is in fact a useful and beneficial material.

Cargill further objects to this request on the ground that it is unlimited in time and in effect asks whether a certain event ever occurred at any time in history. The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to this request on the ground that it is compound.

Cargill further objects to this request on the ground that Plaintiffs’ definition of “run-off” is vague, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, particularly in its use of the phrase “directly or indirectly.” Cargill also objects to this request on the ground that Plaintiffs’ definition of the term “run-off” uses the word “release,” which is a term of art in CERCLA and other environmental litigation and has a meaning inconsistent with Plaintiffs’ use here. This inconsistency renders requests using the term “run-off” vague, ambiguous, misleading, and internally contradictory. Cargill also objects to this request on the ground that Plaintiffs define the phrase “run-off” only as a noun, but the request for admission uses the phrase only as a verb, rendering the request vague, unintelligible, and potentially misleading.

Inasmuch as Plaintiffs’ attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) (“when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder”). Therefore, without waiving these objections, and without being bound by Plaintiffs’ definitions, Cargill responds as

follows:

With respect to Cargill's own poultry-growing operations:

- As to phosphates, Cargill denies this request.
- As to elemental phosphorus and other phosphorus compounds, Cargill denies this request.

With respect to poultry farmers with whom Cargill contracted:

- As to phosphates, Cargill denies this request.
- As to elemental phosphorus and other phosphorus compounds, Cargill denies this request.

Request to Admit No. 10: Admit that poultry waste contributes a greater amount of phosphorus to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined.

RESPONSE: Cargill objects to this request on the ground that Plaintiffs' definition of "phosphorus" as including phosphorus, phosphates, and phosphorus compounds renders the request compound, argumentative, and misleading. Phosphorus, phosphates, and phosphorus compounds are entirely different materials with different physical chemical characteristics that have different environmental and toxicological effects and are subject to different laws and legal standards. Plaintiffs' effort to artificially combine all three substances into a single definition for their request for admission is therefore inherently misleading in any context in which the responses to the request for admissions would be used.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the

term “poultry waste” as argumentative, inasmuch as poultry material used as fertilizer is not “waste” but is in fact a useful and beneficial material.

Cargill further objects to the request on the ground that it is premature. Information that may bear on the response to this request is in the hands of Plaintiffs and has been requested by Cargill through discovery and other means. Plaintiffs have not yet produced much of this requested information, and to the extent such information has been produced, Cargill has not yet had a sufficient opportunity to review and evaluate that information. Cargill further objects to this request on the ground that it may be more appropriately the subject of expert testimony and, thus, exceeds the scope of expert discovery permitted by this Court’s scheduling orders and by Fed. R. Civ. P. 26(b)(4).

Without waiving these or the other objections set forth above, Cargill denies this request.

Request to Admit No. 11: Admit that poultry waste contributes a greater amount of pathogens to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife and septic systems combined.

RESPONSE: Cargill objects to this request on the ground that it is premature. Information that may bear on the response to this request is in the hands of Plaintiffs and has been requested by Cargill through discovery and other means. Plaintiffs have not yet produced much of this requested information, and to the extent such information has been produced, Cargill has not yet had a sufficient opportunity to review and evaluate that information. Cargill further objects to this request on the ground that it seeks expert information and exceeds the scope of expert discovery permitted by this Court’s scheduling orders and by Fed. R. Civ. P. 26(b)(4).

Cargill further objects to Plaintiffs' definition of "pathogens" as vague, overly broad, misleading, and internally contradictory. Although Plaintiffs' definition states that it is only intended to include "microorganisms (e.g., bacteria, viruses, or parasites) that can cause disease in humans, animals and plants," it gives as examples broad classes of microorganisms, including total coliforms and fecal coliforms, many species of which are harmless and have no capacity to cause disease in humans, animals, or plants. This internal contradiction prevents meaningful response to the request.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material.

Without waiving these objections, Cargill denies this request.

Request to Admit No. 12: Admit that poultry waste contributes a greater amount of phosphorus to Lake Tenkiller than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined.

RESPONSE: Cargill objects to this request on the ground that Plaintiffs' definition of "phosphorus" as including phosphorus, phosphates, and phosphorus compounds renders the request compound, argumentative, and misleading. Phosphorus, phosphates, and phosphorus compounds are entirely different materials with different physical chemical characteristics that have different environmental and toxicological effects and are subject to different laws and legal standards. Plaintiffs' effort to artificially combine all three substances into a single definition for their

request for admission is therefore inherently misleading in any context in which the responses to the request for admissions would be used.

Cargill further objects to Plaintiffs' request on the ground that its definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Cargill further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material. In addition, Cargill objects to Plaintiffs' use of the term "feed waste" as vague.

Cargill further objects to Plaintiffs' request that it is premature. Information that may bear on the response to this request is in the hands of Plaintiffs and has been requested by Cargill through discovery and other means. Plaintiffs have not yet produced much of this requested information, and to the extent such information has been produced, Cargill has not yet had a sufficient opportunity to review and evaluate that information. Cargill further objects to this request on the ground that it may be more appropriately the subject of expert testimony and, thus, exceeds the scope of expert discovery permitted by this Court's scheduling orders and by Fed. R. Civ. P. 26(b)(4).

Without waiving these objections, Cargill denies this request.

Request to Admit No. 13: Admit that one or more of your poultry growing operations located in the Oklahoma portion of the Illinois River Watershed is not in compliance with its animal waste management plan.

RESPONSE: Cargill objects to this request based on Plaintiffs' erroneous definition of the term "your poultry growing operations" to include "poultry growing operations under contract with" Cargill. In fact, poultry growing operations under contract with Cargill were never Cargill's poultry growing operations, as Plaintiffs

are well aware. The incorporation of this erroneous definition in Plaintiffs' request is argumentative, assumes facts not only not in evidence but also known by Plaintiffs to be false, and appears intended to mislead a reader or listener to infer that Cargill had ownership of or control over contract growers that it did not actually have.

Cargill further objects to the request as premature on the ground that information that may bear on the response to this request is in the hands of Plaintiffs and has been requested by Cargill through discovery and other means. Plaintiffs have not yet produced much of this requested information, and to the extent such information has been produced, Cargill has not yet had a sufficient opportunity to review and evaluate that information. Cargill further objects to this request on the ground that it may be more appropriately the subject of expert testimony and thus exceeds the scope of expert discovery permitted by this Court's scheduling orders and by Fed. R. Civ. P. 26(b)(4).

Cargill further objects to this request on the ground that it mistakenly assumes that Cargill operates any "poultry growing operations located in the Oklahoma portion of the Illinois River Watershed."

Inasmuch as Plaintiffs' attorneys have declined to either to correct the mistaken assumptions or to eliminate the compound nature of this request, Cargill has attempted to respond separately to each of the component parts of the request for admission based on what Plaintiffs appear to intend. See Fed. R. Civ. P. 36(a) ("when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder"). Therefore, without waiving these objections, and without being bound by Plaintiffs' definitions, Cargill responds as follows:

Without waiving these objections, Cargill denies that any of its poultry growing operations located in Siloam Springs and Gentry, Arkansas, are not in compliance with their animal waste management plans.

With respect to independent poultry-growing operations in the Oklahoma portion of the Illinois River Watershed with which Cargill contracts, Cargill denies this request.

Response to Request for Production

Request for Production No. 1: For each of the above Requests to Admit that you deny, please produce any and all documents in your possession, custody and control that support your denial (to the extent you have not already produced them to the State in this litigation).

RESPONSE: To the extent that Cargill denies the foregoing requests for reasons other than lack of information, many of the documents supporting those denials have already been produced, either by Cargill, by other Defendants, or in many instances by Plaintiffs themselves.

Cargill will also provide additional responsive documents at a time and location and in a manner to be agreed by counsel. These documents do not necessarily come from Cargill's corporate or historical records, and many have been identified as part of the response to this litigation by Cargill, its attorneys, or its agents. Cargill produces these documents because they are responsive to Plaintiffs' request, and Cargill does not by producing them necessarily endorse any or all of these documents, adopt any of their contents, or agree with any particular statement(s) those documents may contain.

If further responsive documents are identified and not otherwise disclosed by the parties, such documents will be produced at a mutually agreeable time and

location. Discovery is continuing, and Cargill reserves the right to supplement this response as discovery continues, as well as through its expert disclosures.

Respectfully submitted,

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